



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 937 OF 2024

Firoj Shaikh s/o Shabbir Shaikh Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. VM,. Lute, counsel for applicant.

Mr. N.B. Jawade, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/11/2024.

1. The applicant came to be arrested on 16/03/2024 in connection with Crime No. 190/2024 registered with police Station Kalmeshwar, District Nagpur for the offence punishable under Sections 302, 324, 504 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of the report lodged by the wife of the present applicant, namely Mona Firoz Shaikh, who alleged that her marriage was performed with the present applicant. On 22/08/2024, after marriage, she resumed cohabitation, and they have begotten one daughter. However, the informant was not treated well and was quarreling with her, and therefore, she again returned to her father's house and was residing along with her father. On 15/3/2024, at about 10.30 a.m. when she was present in the house along with her father and daughter, at the relevant time, the applicant came home, and there was an altercation of words between him and her father, and her father asked him to go from the

said place. On the same night, he heard the noise, and therefore, she attempted to open the door; however, the door was closed from the outside, and therefore she came out from the other door and witnessed the present applicant assaulting her father. Due to the assault and the present applicant, her father succumbed to the dead. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who submitted that the allegation levelled against the present applicant is only with intent to implicate him in the false offence. In fact, no independent witnesses are examined by the investigating officer as far as the alleged incident is concerned. The applicant is suffering from a mental disorder. Moreover, there are variations in the statements of the informant. Thus, considering all these aspects, the suspicion can be raised against the occurrence of the incident. The occurrence of the incident itself is doubtful, in view of that the applicant be released on bail.

4. Learned APP and learned counsel for the informant strongly opposed the said application and submitted that the informant is the eye witness of the said incident. The statement of her daughter is also recorded it shows the involvement of the applicant in the alleged incident. As far as the defence of insanity is concerned, there is no material to show that the applicant is suffering from the mental disorder. It is further submitted that the

spot panchanama, wherein the bloodstains are found and collected by the investigating agency. The statement of the witnesses and the P.M. report, sufficiently shows that the death of the deceased is caused due to the head injury, which is caused by the present applicant. Considering the nature of the offence, in view of that, the application deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that the applicant is the husband of the informant and there was a matrimonial dispute between the informant and the present applicant. Previously also, the informant had lodged the report against the present applicant as he was suspecting the character of the informant, and she started residing along with her father. It reveals from the recitals of the FIR that on 14/03/2022 also, the applicant had been to the Katol Naka and restrained the informant and abused her and assaulted her by suspecting her character. Therefore, she lodged the report at Gittikhanda Police Station, Nagpur. On 15/3/2024, against the applicant, he was in front of the house of the informant, and he was driven out of the house by the deceased. On the said night, the applicant again came and assaulted the deceased and committed his murder. The spot panchanama also substantiate the said contention, as pieces of the tiles were found having blood stains on them. The bloodstains are also found on the spot of the incident. The map of the spot of the incident also sufficiently shows the place where the alleged incident has

taken place. The P.M. report shows that the deceased has sustained all 3 injuries, which are on the vital part of the body, i.e., the head, and corresponding injuries, i.e. internal injuries, are found under the scalp hematoma present over the bilateral temporo -parieto -occuipital region, over an area of 26 cm x 15 cm, dark red. There was a liner displaced fracture of 9 cm length present over left temporal bone, margins irregular and blood infiltrated. The cause of the death of the deceased is due to the head injury.

6. Though learned counsel for the applicant submitted that no independent witnesses are examined by the investigating officer to substantiate the contention. However, merely because the informant is the daughter, she cannot be termed as an interested witness. The another defence raised by the learned counsel for the applicant is that the applicant is suffering from a mental disorder. He attempted to take the act of the present applicant under the exception given under Section 84 of the IPC, which says that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is capable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.

7. Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of unsoundness of mind in the IPC. However, this expression is equivalent to insanity, but the

term insanity itself has no precise definition. In a case where the exception under Section 84 of the IPC is made, the Court has to consider whether at the time of the commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence upto the time the sessions proceedings commenced, is relevant for the purpose of ascertaining whether the plea raised was genuine.

8. Thus, the burden of proving the existence of circumstances proving the case within the purview of the exception under Section 84 lies upon the accused under Section 105 of the Indian Evidence Act. As far as the defence raised by the present applicant is concerned, as to the insanity, at this stage, there is no material on record to show that he is suffering a mental disorder, and defence under Section 84 is available to him.

Considering the nature of the offence, at this stage, no case is made out for grant of bail. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

The criminal application is **rejected** accordingly.

[URMILA JOSHI-PHALKE, J.]